

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KATHLEEN C. PEREA,

Plaintiff,

vs.

No. CIV-13-00697 KG/LAM

JANIE S. CONNER and
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

ORDER REGARDING PENDING DAUBERT MOTIONS

THIS MATTER comes before the Court upon Defendant Conner's Motion to Exclude the Testimony of Plaintiff's Proffered Expert, Richard J. Perrillo, Ph.D. (Doc. 133), filed June 30, 2014; Defendant Conner's Motion to Exclude the Testimony of Plaintiff's Proffered Expert, Anthony M. Gamboa, Ph.D. (Doc. 135), filed June 30, 2014; and Defendant Conner's Motion in *Limine* to Exclude and/or Limit Opinion Testimony of Steve Martinez, Ph.D., pursuant to Fed. R. Civ. P. 26, Fed. R. Evid. 701, 702 and *Daubert v. Merrell Dow* (Doc. 137), filed June 30, 2014. The parties filed responses and replies to the pending motions. *See* (Docs. 212, 229, 252, and 290–92). On April 7–8, 2015, the Court held a *Daubert* hearing. Present at the hearing were James Wood and Thomas Wood, counsel for Plaintiff, and John Stiff and Ann Keith, counsel for Defendant. For the reasons on the record at the April 7–8, 2015, *Daubert* hearing, the Court hereby rules as follows:

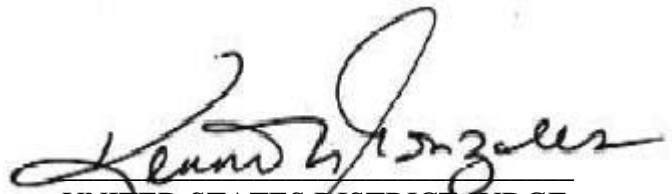
1. the Court grants, in part, and denies, in part, Defendant Conner's Motion to Exclude the Testimony of Plaintiff's Proffered Expert, Richard J. Perrillo, Ph.D. (Doc. 133), filed June 30, 2014. The Court finds Dr. Perrillo's methodology as to the diagnosis of mild traumatic brain injury by the presence of acute injury characteristics reliable and, thus, admissible. The Court,

however, finds Dr. Perrillo's methodology regarding the diagnoses of pervasive white matter change, dementia, and Alzheimer's unreliable and, therefore, Dr. Perrillo's opinion testimony with respect to pervasive white matter change, dementia, and Alzheimer's is excluded;

2. the Court holds in abeyance Defendant Conner's Motion to Exclude the Testimony of Plaintiff's Proffered Expert, Anthony M. Gamboa, Ph.D. (Doc. 135), filed June 30, 2014, until counsel for Defense has represented to the Court, in good faith, that Dr. Thomas Ireland or Dr. Gary Skoog will be able to testify at trial. Counsel for Defense shall notify chambers and opposing counsel no later than noon on April 10, 2015, as to whether Dr. Thomas Ireland or Dr. Gary Skoog will testify at trial; and

3. the Court grants, in part, and denies, in part, Defendant Conner's Motion in *Limine* to Exclude and/or Limit Opinion Testimony of Steve Martinez, Ph.D., pursuant to Fed. R. Civ. P. 26, Fed. R. Evid. 701, 702 and *Daubert v. Merrell Dow* (Doc. 137), filed June 30, 2014. Dr. Steve Martinez's (Dr. Martinez) testimony is limited to that of a non-retained expert. Dr. Martinez is permitted to opine on causation and diagnosis provided that the scope of his opinion testimony is limited to conclusions drawn from his own examination and treatment of Plaintiff. *See Sturgeon v. ABF Freight Systems, Inc.*, 2004 WL 5872664, at *2 (D.N.M.).

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE